

reduction in benefits under the Railroad Retirement Act or Social Security Act, but it will always be used to establish Medicare entitlement before age 65.

(3) *Who may establish a period of disability.* The Railroad Retirement Board or the Social Security Administration may establish a period of disability. However, the decision of one agency is not binding upon the other agency.

(4) *When the Board may establish a period of disability.* The Board has independent authority to decide whether or not to establish a period of disability for any employee who was awarded an annuity under the Railroad Retirement Act, or who—

(i) Has applied for a disability annuity; and

(ii) Has at least 10 years of railroad service.

(5) *When an employee is entitled to a period of disability.* An employee is entitled to a period of disability if he or she meets the following requirements:

(i) The employee is disabled under the Social Security Act, as described in § 404.1505 of this title.

(ii) The employee is insured for a period of disability under § 404.130 of this title based on combined railroad and social security earnings.

(iii) The employee files an application as shown in subparagraph (b)(6) of this section.

(iv) At least 5 consecutive months elapse from the month in which the period of disability begins and before the month in which it would end.

(6) *Application for a period of disability.*

(i) An application for an employee disability annuity under the Railroad Retirement Act or an employee disability benefit under the Social Security Act is also an application for a period of disability.

(ii) An employee who is receiving an age annuity or who was previously denied a period of disability must file a separate application for a period of disability.

(iii) In order to be entitled to a period of disability, an employee must apply while he or she is disabled or not later than 12 months after the month in which the period of disability ends.

(iv) An employee who is unable to apply within the 12-month period after

the period of disability ends because his or her physical condition limited his or her activities to the extent that he or she could not complete and sign an application or because he or she was mentally incompetent, may apply no later than 36 months after the period of disability ends.

(v) A period of disability can also be established on the basis of an application filed within 3 months after the month a disabled employee died.

(c) *Social security overall minimum.* The social security overall minimum provision of the Railroad Retirement Act guarantees that the total monthly annuities payable to an employee and his or her family will not be less than the total monthly benefit which would be payable under the Social Security Act if the employee's railroad service were credited as employment under the Social Security Act.

(The information collection requirements contained in paragraph (b)(6) were approved by the Office of Management and Budget under control number 3220-0002)

**§ 220.37 When a child's disability determination is governed by the regulations of the Social Security Administration.**

(a) In order to receive an annuity based upon disability, a child of a deceased employee must be found disabled under the Railroad Retirement Act. However, in addition to this determination, the child must be found disabled under the Social Security Act in order to qualify for Medicare based upon disability.

(b) Although the child of a living employee may not receive an annuity under the Railroad Retirement Act, he or she, if found disabled under the Social Security Act, may qualify for the following:

(1) Inclusion as a disabled child in the employee's annuity rate under the social security overall minimum.

(2) Entitlement to Medicare based upon disability.

**§ 220.38 When a widow(er)'s disability determination is governed by the regulations of the Social Security Administration.**

In order to receive an annuity based upon disability, a widow(er) must be